

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)	
)	
v.)	ID#: 0805017969
)	
SYE C. NEWTON,)	
)	
Defendant.)	

ORDER

Upon Defendant's Post-trial Motion for Judgment of Acquittal – DENIED

1. On March 10, 2009, the court received Defendant's, *pro se*, "Rule 29 Motion for Judgment of Acquittal," challenging the verdict entered on February 25, 2009. The motion was dated March 6, 2009.

2. Motions for judgment of acquittal under Superior Court Criminal Rule 29(c) must be made "within 7 days after the jury is discharged" Accordingly, Defendant's motion was due on March 6, 2009. Even though Defendant dated, and possibly mailed, his motion on March 6, 2009, Delaware courts do not follow a prisoner "mailbox rule."¹ The court must receive the motion on the date due. And so, Defendant's motion is **DENIED** as untimely.

¹ *Carr v. State*, 554 A.2d 778, 779 (Del. 1989).

3. Were the court to consider the motion substantively, it would observe that the jury heard evidence from which it could have easily concluded that Defendant, an inmate, took another inmate hostage, holding him for hours at the point of a homemade razor-knife. During the stand-off between Defendant and the Department of Correction's negotiators and response team, Defendant cut his hostage's shoulder, producing a wound that a medical expert testified took three stitches to close. By any reasonable definition, a cut requiring three stitches amounts to physical injury.² By the same token, the circumstantial evidence supported the State's claim that the victim was held without his consent. Moreover, it was un rebutted that the hostage did not consent to Defendant's cutting him.

4. The court could find the evidence sufficient, even taking into account that the hostage refused to testify³ and Defendant's claim that he possessed an affidavit, purportedly signed by the hostage, suggesting that the hostage and Defendant were in cahoots and the incident was merely a way for them to bring grievances to the Department of Correction's attention. If the document were authentic, it did not refute the State's case. Moreover, the State presented substantial

² Cf. *Harris v. State*, --- A.2d ---, 2009 WL 195855 (Del. Jan. 23, 2009) (holding that *de minimus* injuries that do not impair the victim's physical condition are not "physical injuries" within the statutory definition).

³ The hostage was found in contempt of court and sentenced summarily.

evidence that, despite the affidavit, the hostage was actually held against his will, in terror, while Defendant demanded alcohol and other things. But, the hostage's "affidavit" was inadmissible and the State's evidence was not refuted (Defendant, who chose self-representation, presented no evidence.). Besides the fact that the hostage's physical injury was relatively minor, this was not a close case. That finding would take into account the hostage's refusal to testify.

As provided in paragraph 2, above, Defendant's March 10, 2009 untimely Motion for Judgment of Acquittal, dated March 6, 2009, is **DENIED**.

IT IS SO ORDERED.

Date: March 17, 2009 /s/ Fred S. Silverman

Judge

oc: Prothonotary (Criminal Division)
pc: Karin M. Volker, Deputy Attorney General
Todd E. Conner, Esquire, stand-by Counsel for *pro se* Defendant
Sye C. Newton, Defendant